



January 17, 2001

Ms. Nancy Nelson
Associate Vice President
Employee Relations
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998-0500

OR2001-0177

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143279.

The El Paso Community College District (the "district") received a written request for all records pertaining to the requestor's complaints of harassment. You contend that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

To secure the protection of section 552.103(a) of the Government Code, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). You explain that the requestor has filed a civil rights complaint with the Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. You have provided this office with a copy of that complaint. The filing of such a complaint constitutes evidence that the likelihood of litigation against the district by the complainant/employee is more than mere conjecture. See Open Records Decision No. 386 (1983). We therefore conclude that the district may reasonably anticipate litigation regarding the subject matter of the requested information. We also conclude that the records at issue on their face demonstrate how they relate to the anticipated litigation for

purposes of section 552.103. We therefore conclude that the district may withhold most of the information at issue pursuant to section 552.103 of the Government Code.¹

This office has previously concluded that, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, to the extent that the records at issue have been previously viewed by the requestor, those records are not protected by section 552.103 and therefore must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

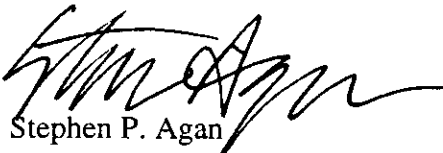
¹Because we resolve your request under section 552.103, we need not address the applicability of section 552.108 of the Government Code.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 143279

Encl. Submitted documents

cc: Ms. Luci Gallardo
6165 Cleveland Avenue
El Paso, Texas 79905
(w/o enclosures)